

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 326 OF 2007

ASHOK GANGARAM GADE
age 45 yrs, Occ. Labour,
R/o Takrala, Taluka Himayatnagar,
District Nanded. Petitioner.

VERSUS

1. PUSHPA@ SHANTABAI ASHOK GADE
age 27 yrs, Occ. Labour,
R/o Pota, Tq. Himayatnagar, Dist Nanded.
2. Umakant s/o Ashok Gade,
age 7 yrs, minor u/g of resp no.1.
R/o as above. Respondents.

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Advocate for Petitioner : Mr S D Hiwrekar
Respondents absent.

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CORAM : V.K. JADHAV, J.

Dated: November 15, 2016

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ORAL JUDGMENT :-

1. Being aggrieved by the judgment and order passed by the Judicial Magistrate First Class, Himayatnagar dated 6.5.2006 in Cri. M.A. 11/2004 and the Judgment and order dated 19.4.2007 passed by the Sessions Judge, Nanded in Criminal Revision Petition No.72/2006 confirming thereby the order passed by the Magistrate, the original non-applicant husband has

preferred this criminal writ petition.

2. Brief facts, giving rise to the present writ petition are as follows :-

According to respondent no.1 wife she got married with petitioner husband six years back prior to filing the application for grant of maintenance before the Magistrate and respondent no.2 born to them out of their marital wedlock. It is also case of respondent wife that for initial period of 5-6 months after marriage she was treated well and thereafter she was subjected to mental and physical harassment by the petitioner husband. Even in the month of June, 2000 she was subjected to severe beating and she therefore came to be admitted in the Government Hospital at Bhokar. Even she had filed a complaint in Tamsa Police station in respect of the said incident. Thereafter, the petitioner husband had driven her out from the house and since then she is residing with her parents. Respondent wife therefore constrained to file an application bearing Cri. M.A No.11/2004 for grant of maintenance against the petitioner-husband. According to the respondent-wife

she herself and her minor son are unable to maintain themselves and they have no independent source of income. Petitioner-husband though having sufficient means refused and neglected to maintain them. Thus, respondent wife has claimed maintenance @ Rs.1,500/- p.m. from the petitioner-husband.

Petitioner husband has strongly resisted the application for maintenance by filing his say. It has contended that respondent no.1 is not his legally wedded wife and initially he had married with one Muktabai, however, he divorced her in the year 1989 and thereafter he married with Babybai. He had also given divorce to her in the year 1990. It has also contended that thereafter illicit relations were developed with respondent no.1 and accordingly out of said illicit relations she had conceived and given birth to respondent no.2. It has also contended that he has no independent source of income and he earns by doing labour work on daily wages. He had declined to pay maintenance to respondent no.1 wife as she is not his legally wedded wife, however, he has shown his

readiness and willingness to maintain respondent no.2, who is his son.

3. The learned Judicial Magistrate First Class, Himayatnagar by its impugned judgment and order dated 6.5.2006 partly allowed the maintenance application and thereby directed the petitioner to pay maintenance allowance @ Rs.800/- p.m. to respondent no.1-wife and Rs.500/- p.m. to respondent no.2 son from the date of application alongwith costs of Rs.500/-. Being aggrieved by the same, the petitioner-husband preferred criminal revision petition no.72/2006. The learned Sessions Judge, Nanded by its impugned judgment and order dated 19.4.2007 dismissed the revision by confirming the order passed by the Magistrate. Hence, this writ petition.

4. Learned counsel for petitioner submits that, respondent no.1 is not legally wedded wife of petitioner and at the time of filing of the application for maintenance, the marriage of the petitioner with one Bebibai was in subsistence. Learned counsel submits

that, on the basis of the complaint filed by the said Bebibai charge sheet came to be submitted against the present petitioner and his family members for having committed an offence punishable u/s 498A, 323, 504 r/w 34 of IPC and accordingly the petitioner alongwith his parents came to be tried by the JMFC, Hadgaon vide RCC 192/1994. The learned Magistrate, Hadgaon by Judgment and order dated 20.4.1996 acquitted the petitioner and his family members in RCC 192/1994. Learned counsel submits that, it is thus clear that, respondent no.1 herein is not legally wedded wife however, courts below have not considered the same. Learned counsel submits that, petitioner-husband has no sufficient means to pay the maintenance. He has no fixed income and he is doing labour work on daily wages. Learned counsel submits that, petitioner husband is unable to pay maintenance as awarded by the trial court.

5. None present for the respondent-wife.
6. On careful perusal of the judgment and order

passed by the Magistrate, it appears that, respondent no.1 wife has examined herself on oath and also examined one Sajjanrao Suryawanshi in support of her contention. Both of them have deposed before the court that in the year 1997 respondent no.1 wife got married with petitioner-husband in the temple of God Basveshwar at village Yeoli as per Hindu rites and rituals. They have given all details of the marriage including antarpatri, performance of sapthapadi etc. There is nothing in the cross examination to disbelieve their version.

7. Petitioner-husband contends that he had given divorce to his wife bebibai in the year 1990. In the year 1994 bebibai though filed complaint against the petitioner Ashok for having committed an offence p/u/s 498-A of IPC, she herself or her witness in the said case have not supported the prosecution case in any manner and therefore, petitioner herein came to be acquitted in the said case. In the year 1997 as per his own case, petitioner husband had given divorce to the said Bebibai and he was residing alone. Under these circumstances,

complaint filed by said Bebibai in the year 1994 on the basis of which the petitioner-husband herein came to be tried by the Magistrate vide RCC 192/1994 loses its significance. Furthermore, petitioner husband has also accepted during the course of his cross-examination that respondent no.1 wife cohabited with him till the year 2000 and respondent wife gave birth to respondent no.2. Even though petitioner husband has examined Pujari of said temple, however, said witness has failed to bring with him register maintained by the said temple wherein entry usually taken in respect of the marriage performed in the said temple. Both the courts below have observed that evidence of said Pujari is meaningless and his evidence is not helpful to petitioner husband in any manner.

8. Thus, considering the oral evidence adduced by the parties in support of their rival contentions, both the courts below have correctly held that respondent no.1 is legally wedded wife of petitioner husband and that, petitioner-husband though having sufficient means to pay maintenance, neglected and refused to pay

maintenance to respondent-wife, who is unable to maintain herself and her minor son. It further appears from the evidence led by respondent no.1 wife that she has just cause to reside separately and claim maintenance. Thus, considering the standard of living and income of petitioner-husband, the learned Magistrate has rightly granted maintenance @ Rs.800/- p.m. to respondent wife and Rs.500/- p.m. to respondent no.2 Son. No interference is called for. There is no merit in the criminal writ petition. Hence, following order.

O R D E R

- I. Criminal writ petition is hereby dismissed.
- II. Rule discharged.
- III. Criminal writ petition accordingly disposed off.

sd/-

(V.K. JADHAV, J.)

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aaa/-